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**ANALYSIS OF CONFLICT-OF-INTEREST
CASES FOR THE
REPRESENTATION OF INDIGENT CLIENTS**

SF
**BOARD OF SUPERVISORS
BUDGET ANALYST**

OCTOBER, 1992

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October 23, 1992

Honorable Jim Gonzalez
Member, Board of Supervisors
City and County of San Francisco
Room 235, City Hall
San Francisco, California 94102

Dear Supervisor Gonzalez:

Pursuant to a motion adopted by the Board of Supervisors, the Budget Analyst has conducted an analysis of conflict-of-interest cases that are currently represented by attorneys appointed through an agreement with the Bar Association of San Francisco. Our study included a review of Court procedures for the appointment of private counsel; the cost and number of conflict cases; the potential and cost of using non-profit community legal counsel; a review of literature to determine the potential of other cost effective measures; and a survey of the procedures used for assigning conflict cases and the cost of services in seven California counties.

Our recommendations for controlling conflict case costs are detailed in Section 6 beginning on page 13. Briefly, we recommend that the Courts consider:

1. Conducting an independent survey of the compensation paid to conflict case attorneys in comparable jurisdictions when the Bar Association of San Francisco (or any other organization representing indigent clients) requests a rate increase for conflict attorneys.
2. Reviewing other contract options that could result in reduced costs for the conflict case program. These options include moving to a fixed price contract for conflict case services with the Bar Association of San Francisco, soliciting proposals from non-profit agencies or competitively bidding the contract for conflict case services.
3. Implementing additional administrative reforms including formalizing written procedures for clerical and administrative review of claims prior to submission to the Judges for approval; establishing guidelines for assessing the validity of out-of-court time and monitoring those guidelines; establishing an annual earnings threshold for attorneys that would result in a formal review of each attorney's submissions for payments once they exceeded the threshold; and developing broad statistical profiles of each case type so that the Judges can assess whether a claim is reasonable.

In the written response from the Presiding Judge of the Superior Court (which begins on page 23 of this report), the Presiding Judge indicates that the Superior Court is generally willing to consider the recommendations made by the Budget Analyst. However, the

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Executive Summary

Pursuant to Penal Code Section 987.2, when a conflict exists between two Public Defender clients, the court can appoint private counsel to represent an indigent client. The funds for private counsel are provided from the County's General Fund and the County must pay whatever costs have been accrued for the representation of conflict cases.

The San Francisco Municipal Court and Superior Court have established an agreement with the Bar Association of San Francisco (BASF) for the provision of legal services to indigent defendants. Once qualified, BASF attorneys are assigned to various panels representing different types of cases. BASF attorneys received an increase in compensation in September of 1990. The Courts and BASF have established no fee ceilings per case or per attorney and the Judges determine whether the requested fees are appropriate on a case-by-case basis.

A survey of seven other California counties revealed that most counties use the county bar association to some degree for the provision of conflict case services. Some counties, most notably Los Angeles and San Diego, have established non-profit Alternate Defense Counsel organizations in an attempt to control conflict case costs.

As shown in Table 1 on page 8, the total cost of the conflict case program, the number of cases and the average cost per case have increased significantly over the previous five years. There are a number of reasons for these increases, but the primary cause was the rate increase granted to BASF attorneys in 1990. During 1991-92, the total costs of the program and the average cost per case both decreased from 1990-91 due to administrative controls implemented by the Superior Court, a change in the procedures for scheduling attorneys for dependency hearings and, perhaps indirectly, through the scrutiny the program received from the Board of Supervisors and numerous articles that appeared in the legal press. As part of further FY 1992-93 budget reductions, the Superior Court will reduce the hourly rate for BASF attorneys by \$5 per hour for criminal cases and \$10 per hour for juvenile cases.

In an attempt to control costs, the Board of Supervisors reserved funding from the Superior and Municipal Courts' budgets for 1991-92, pending the submission of a proposal from two non-profit agencies. This proposal, which was submitted by Mission Community Legal Defense (MCLD) and Bayview-Hunter's Point Community Defender Program (BVHP), stated that a total of 1,000 indigent clients would be represented for \$750 per case or a total of \$750,000. The proposal was eventually withdrawn by MCLD and BVHP. In the judgment of the Budget Analyst, there is no reason why a non-profit agency proposal should not be considered in the future, if such a proposal were to result in reduced costs and quality representation.

The implementation of proposed recommendations of the Budget Analyst for controlling conflict case costs is solely at the discretion of the Courts. The Superior Court has recently implemented procedures and cost-control measures

that have resulted in a reduction in total costs and in the average cost per case in 1991-92. The Budget Analyst has made the following additional recommendations which the Courts should consider:

1. The Courts should conduct an independent survey of the compensation paid to conflict case attorneys in similar jurisdictions when BASF requests a rate increase. Such a survey will provide the Courts with the documentation to evaluate future requests for rate increases.
2. The Courts should consider other contract options that could result in reduced costs for the conflict case program. These options could include moving to a fixed price contract for conflict case services with BASF, soliciting proposals from other non-profit agencies or competitively bidding the contract for conflict case services. These contract options could be developed for the entire conflict case workload or for a portion of the services. The decision as to whether or not to adopt an alternative to the current provision of services should be based on an evaluation by the Judges of whether quality representation could be provided at a reduced cost.
3. The Courts should consider adopting additional administrative reforms which would increase the administrative review of claims. These reforms should include: formalizing written procedures for clerical and administrative review of claims prior to submission to the Judges for approval; establishing guidelines for assessing the validity of out-of-court time and monitoring those guidelines; establishing an annual earnings threshold for attorneys that would result in a formal review of each attorney's submissions for payments once they exceeded the threshold; and developing broad statistical profiles of each case type so that the Judges can assess whether a claim is reasonable.

Section 1: Introduction and Background

Pursuant to a motion adopted by the Board of Supervisors, the Budget Analyst has analyzed court cases for which a conflict-of-interest has been declared by the Public Defender's Office for the representation of indigent clients. A conflict-of-interest is declared when the Public Defender's Office has determined that it is unable to represent a client because to do so would place its attorney's in conflict with the interests of another Public Defender client. This motion directed the Budget Analyst to:

- Review Court procedures for the appointment of private counsel for conflict cases;
- Determine the cost and number of conflict cases;
- Analyze the potential and cost of using non-profit community legal counsel;
- Review the literature to determine the potential of other cost effective measures; and,
- Conduct a survey of other jurisdictions' procedures for assigning conflict cases, use of conflict counsel and the cost of such services.

The Budget Analyst conducted the following activities to fulfill the objectives of this study on conflict cases:

- Conducted interviews with members of the Public Defender's Office, the Superior Court, the Municipal Court, and the San Francisco Bar Association;
- Reviewed the draft Community Defender Plan submitted by the Mission Community Legal Defense, Inc. and Bayview-Hunter's Point Community Defender Program and interviewed staff responsible for development of the Plan;
- Reviewed numerous reports detailing potential solutions for controlling conflict case costs in San Francisco and other jurisdictions;
- Conducted a survey of seven comparable jurisdictions to document procedures used for conflict cases, the costs of such programs, and the provider of conflict services.

Survey of Other Jurisdictions

A complete summary of all survey responses is shown in Appendix 1. The seven jurisdictions that were contacted for information on the handling of conflict cases are the counties of Alameda, Contra Costa, Los Angeles, Marin, San Diego, San Mateo, and Santa Clara. The survey results show that the local bar

association is used, at least partially, by most counties. The details for each county are shown below:

Alameda:	Contracts with the Alameda County Bar Association for the provision of conflict attorney services.
Contra Costa:	Contracts with the Criminal Conflicts Program operated by the Contra Costa County Bar Association.
Los Angeles:	Uses a mixture of service providers including the Alternate Defense Council, which is a non-profit organization; the Indigent Criminal Defense Appointments Panel of the Los Angeles County Bar Association; and the Pomona Contract Lawyers Association.
Marin:	The Superior Court generates and maintains a panel list of attorneys that are assigned felony and juvenile conflict cases. The Municipal Court contracts with the Marin County Bar Association.
San Diego:	In June 1989, an Alternate Defense Counsel office was established and staffed by County employees.
San Mateo:	Does not have a Public Defender's Office but contracts with the San Mateo County Bar Association.
Santa Clara:	Contracts with the Conflicts Administration Program, Inc., a non-profit corporation established by the Bar Association, the County Courts and the County Administration.

The details of total cost and cases is shown for most jurisdictions in Appendix 1. It is difficult to compare average case costs between jurisdictions because there are significant variations between how cases are classified, the rate structure and the rates of compensation and the degree to which administrative and overhead costs are included in case costs.

Section 2: Legal Basis For Conflict Counsel

Individuals accused of crimes have a constitutional right to legal representation. For those individuals who do not have the resources to retain their own counsel, the Courts require that an attorney be provided for them. In most cases this representation is provided by the Public Defender. However, there are cases where a conflict-of-interest occurs between two or more clients of the Public Defender. This usually occurs when there is more than one defendant in a case and the Public Defender can only represent one client. Conflict cases also occur in juvenile dependency cases where an attorney can be required for each child and each parent. Additionally, there can be cases where, for whatever reason, the

Public Defender is unavailable to represent a case and alternative representation must be provided.

Pursuant to State Penal Code Section 987.2, when a conflict exists, the court must appoint private counsel to represent an indigent defendant. This can result in the court appointing individual attorneys. However, as noted above, most jurisdictions have established some type of formal program for the appointing of counsel for conflict cases. This is in compliance with Guidelines on Indigent Defense Services Delivery Systems as approved by the State Bar of California.

Penal Code Section 987.2 also requires that the funding for indigent representation, including conflict cases, be provided from each county's General Fund. The county does not have a choice and must pay whatever costs have been accrued by both the Public Defender and the costs associated with conflict cases.

Each county also does not have a role in reviewing conflict case costs or placing direct administrative controls over conflict cases. The determination of appropriate compensation for attorneys resides with the Judges of the Superior and Municipal Courts. However, each county must approve the budgets of the Superior and Municipal Courts and, therefore, can review the costs of the conflict case program.

Section 3: Bar Association of San Francisco

The San Francisco Municipal Court and Superior Court (the Courts) have established an agreement with the Bar Association of San Francisco (BASF) for the provision of counsel services to indigent defendants. BASF has established a number of attorney "panels", from which attorneys are drawn, including four Criminal Law Panels (misdemeanors, regular felonies, serious felonies, and death penalty and life sentence cases) and two Juvenile Panels (dependency cases and delinquency cases). The Juvenile dependency panel is further divided into two panels, one of which represents parents and one which represents children.

Attorneys who desire to belong to BASF panels must complete an application which requires attorneys to detail their relevant case experience. After acceptance, attorneys are assigned to individual panels based on experience, area of expertise and training. For certain panels, BASF offers apprenticeships or offers or requires various training programs. Attorneys must pay BASF \$40 per year to participate in the program. Additionally, BASF receives two percent of total attorney payments to cover administrative costs.

Fees for Services

BASF received its first rate increase since 1983 in September of 1990 to the following levels:

Municipal Court

\$55/hour in or out of court for both misdemeanors and felonies

Superior Court

Regular Felonies

\$70/hour in or out of court

Serious Felonies

\$85/hour in or out of court

Special Circumstances

\$100/hour in or out of court

Juvenile Delinquency

Paid at the appropriate felony or misdemeanor schedule

Juvenile Dependency

\$75/hour for dependency proceedings and other juvenile non-criminal matters

The previous rate schedule for both the Superior and Municipal Courts was as follows:

Attorney In Court Time

\$45 per hour

Attorney Out-of-Court Time

\$35 per hour

Attorney Trial Time

\$350 per day

Attorney Fees for Juvenile Cases

Same as appropriate category above

Because of the changes in the components of the fee schedule, it is difficult to calculate the average hourly increase, but overall the average increase was approximately from \$41 to \$66 per hour, or 61 percent. This is reflected in the total cost and cost per case data from 1989-90 to 1990-91, the period over which the rate increase was granted. The total costs of the program increased approximately 67 percent over this period and the average cost per case increased approximately 83 percent (see Table 1 on page 8). These increases were substantially due to the 61 percent rate increase.

In response to further FY 1992-93 budget reductions made by the State, the Superior Court decided to lower the compensation for BASF attorneys by \$5 per hour for criminal cases and \$10 per hour for juvenile cases. This rate decrease becomes effective November 1, 1992. The net affect is to lower the average hourly rate by \$4 from \$66 to \$62. No reduction was made to the rates paid in Municipal Court.

The Courts and BASF have established no fee ceilings per case or per attorney and the Judges determine whether the requested fees are appropriate on a case-by-case basis.

Payment Procedures

Attorneys are paid their fees after they present documentation of their fees and costs on a standard form. This form requires the attorney to detail both non-trial and trial court appearances, specify preparation time and itemize all expenses. The form requires the attorney to sign a statement that under the penalty of perjury the presented information is accurate and correct.

It is the responsibility of the Judges to approve payment and to determine if the amount requested is a reasonable reflection of the effort required for each case. If a question arises concerning a specific billing, the Judge will request an explanation from the attorney. The Judges have the authority to not appoint an attorney if they believe they have a record of inappropriate billings.

The Superior Court has recently implemented an automated system to track attorney fees. This system contains data on each case represented by the attorney and the total fees submitted. Superior Court employees have been granted authority by the Judges to resolve questions involving double billing of court hours, billing for travel time or billing for time resulting from invoice preparation. In instances where the attorney has billed more than eight out-of-court hours per day, or for more than six in-court hours per day, Superior Court employees will contact the appropriate Judge to determine if the charge is correct.

Procedures currently used by the Municipal Court include having each Judge review all submitted claims for payment. Upon review, claims under \$1,000 are ordered paid by the Judge and claims in excess of \$1,000 are submitted with a recommendation to the Judge's Administrative Committee for final approval. Prior to final Administrative Committee approval, the claim is reviewed by administrative staff for accuracy and required pre-approval orders for expert witness and/or investigator expenses claims. The Municipal Court intends to implement an automated system by early 1993.

Section 4: Costs of Conflict Cases

One of the primary reasons this report was requested was concern over the increasing cost of using private, conflict counsel. Table 1 on the following page presents total costs, total cases and the average cost per case for both the Superior and Municipal Courts for the previous five years. This data is based on attorney fees only and does not include the costs of interpreters, expert witnesses, and investigators.

As this table shows, there have been significant increases in each of these areas. Over the five year period from 1987-88 through 1991-92 the total cost of the program has increased by approximately \$3.41 million from \$2.57 million to \$5.98

Table 1

San Francisco Superior and Municipal Court Indigent Defense Costs
5 Year Period 1987-88 thru 1991-92

Total Costs	1987-88	1988-89	1989-90	1990-91	1991-92
Superior Court	\$1,545,164	\$2,310,460	\$2,699,729	\$4,719,578	\$4,215,912
Municipal Court	\$1,029,190	\$1,143,933	\$1,094,049	\$1,625,599	\$1,760,800
Total	\$2,574,354	\$3,454,393	\$3,793,778	\$6,345,177	\$5,976,712
% Change	11.67%*	34.18%	9.82%	67.25%	-5.81%
Total Cases	1987-88	1988-89	1989-90	1990-91	1991-92
Superior Court	2,373	3,858	4,289	3,864	4,774
Municipal Court	2,465	3,220	2,369	2,229	2,502
Total	4,838	7,078	6,658	6,093	7,276
% Change	25.73%*	46.30%	-5.93%	-8.49%	19.42%
Average Cost Per Case	1987-88	1988-89	1989-90	1990-91	1991-92
Superior Court	\$651	\$599	\$629	\$1,221	\$883
Municipal Court	\$418	\$355	\$462	\$729	\$704
Weighted Average	\$532	\$488	\$570	\$1,041	\$821
% Change	-11.17%*	-8.28%	16.75%	82.76%	-21.12%

* Percentage change based on difference between 1986-87 and 1987-88. 1986-87 data is not shown in table.

million, an increase of approximately 133 percent. Over the same period the total number of cases has increased by 2,438 from 4,838 to 7,276, an increase of approximately 50 percent. The average cost per case over the five year period has increased by \$289 from \$532 to \$821, an increase of over 54 percent.

There are two trends in the data that need to be examined more closely. First, the large increase in total conflict case costs and the average cost per case is due primarily to the increase in Bar Panel attorney fees, which were approved by the Courts in August 1990. Such fees are not subject to approval by the Board of Supervisors. This increase substantially led to total costs increasing by over 67 percent and the average cost per case increasing approximately 83 percent from 1989-90 to 1990-91. Prior to the fee increase, the average cost per case for the previous three years (1987-88 through 1989-90) had increased a total of 7.1 percent, with an actual decrease in costs for two of these three years.

The other important trend is for 1991-92, where the total costs of the conflict program actually showed an 5.8 percent decrease from 1990-91 costs of \$6.35 million to \$5.98 million. The average cost per case decreased even more dramatically, dropping by 21 percent from \$1,041 per case to \$821 per case. This decline in case costs can be attributed to the various cost control and accountability measures that were adopted by the Superior Court. Additionally, a change in the procedures for scheduling attorneys for dependency hearings has resulted in reduced charges for attorney services due to reduced waiting time. Finally, costs could have been impacted indirectly due to the scrutiny the conflict case program has received by the Board of Supervisors and numerous articles that appeared in the legal press.

In his 1990-91 annual report, the San Francisco Public Defender listed several other reasons, besides the rate increase granted to BASF attorneys in 1990-91, which he believes have led to an increase in conflict case costs. These reasons include:

- "The increase and accumulation of dependency cases which routinely involve the representation of several parties and remain on court calendars for years with periodic reviews.
- The rise in the number of felony cases and an accompanying rise in the number of cases with multiple defendants.
- An increase in the number of motions to revoke felony probation in the last four years.
- The failure of the courts and court administrators to review conflict attorney bills for overpayment."

Average Cost Per Case Type

As part of this study, we analyzed a sample of conflict cases from FY 1991-92 to determine the average cost for various case categories in both the Municipal and Superior Courts. This analysis has been supplemented by records that the Courts have been recently compiling. This data is shown in Table 2 below:

Table 2

Average Cost Per Case Type

<u>Case Type</u>	<u>Municipal Court</u>	<u>Superior Court</u>	<u>Total</u>	<u>Number of Cases</u>
Misdemeanors	\$454	----	\$454	189
Regular Felonies	437	444	881	452
Serious Felonies	1,814	1,071	2,885	37
Serious Felonies - Life Term	<u>7,170</u>	<u>25,561</u>	<u>32,731</u>	<u>8</u>
Weighted Average	\$594	\$895	\$1,243	686

The Superior Court sample was taken from the last five months of 1991 and the Municipal Court sample was taken from the last three months of 1991. Costs were calculated based on totaling the claims submitted and the amounts paid to each attorney.

Detailed cost data for each case type was not available from the Courts for the entire year. However, as shown in Table 1 the average cost per case for 1991-92 for Superior Court cases was \$883, which was close to the case sample cost of \$895. For Municipal Court cases, there was a significant difference between the average sample cost of \$594 and the actual entire year average of \$704. This difference could be attributable to there being a different mix of cases for the entire year when compared to the case mix in the sample (i.e., there could have been more serious felonies for the entire year than represented in the case sample).

This sample, as expected, shows how the complexity and severity of the case impacts the cost of conflict attorney representation. This issue is important when discussing the savings that would result from using a non-profit or private contractor, as discussed below in Section 5.

Section 5: Proposal for Non-Profit Indigent Defense Counsel

The Board of Supervisors reserved a total of \$750,000 from the Superior and Municipal Courts' budgets in 1991-92 to allow for the submission of a proposal that would use non-profit agencies to represent a portion of the conflict case workload

at a lower cost. In October 1991, the Mission Community Legal Defense, Inc. (MCLD) and Bayview-Hunter's Point Community Defender Program (BVHP) submitted a joint proposal to represent a portion of the conflict cases currently handled by BASF. MCLD and BVHP are two non-profit Community Defender law agencies that have practiced criminal law in San Francisco courts for 19 and 21 years respectively. Both agencies have received Federal Community Development Block Grant funds for approximately 20 years.

MCLD and BVHP proposed representing a total of 1,000 indigent clients for a total cost of \$750,000 or \$750 per case. The caseload would be divided evenly between the two agencies. The proposal included 80 percent adult criminal cases, divided evenly between "regular" felonies and misdemeanors and 20 percent juvenile delinquency cases. The cost savings from adopting this proposal were not specified but the proposal stated that such savings would be significant given the stated average cost of felony cases of \$2,516. The \$2,516 cost for representing felonies was based on combining the average cost of Superior and Municipal Court felony costs for 1990-91.

After the submission of this proposal, a number of problems arose. Attorneys who worked for BVHP objected to the expansion of its role in the community and therefore BVHP withdrew from the proposal. Questions were also raised by the Courts about the level of cost savings that would actually occur. As of the writing of this report, the proposal has been withdrawn by both BVHP and MCLD and no new proposal by the previous two nonprofit agencies or any other agency has been received by the City for consideration.

Because the proposal was withdrawn, the Board of Supervisors approved release of \$750,000 in reserved funds for conflict cases for FY 1991-92. While the non-profit proposal was never formally evaluated, there are two areas - the proposed cost per case and the compositions of referred cases - that should be considered if an additional proposal in the future is submitted. The Budget Analyst concludes that there is no reason why a non-profit agency proposal should not be considered, if that proposal would result in both reduced costs and quality representation of indigent clients.

Cost Per Case

As noted above, the two non-profit agencies proposed handling 1,000 cases at a cost of \$750 each. The proposal notes that since the average cost for conflict attorneys trying felony cases is \$2,516¹, a significant savings would occur. However, this \$2,516 figure is significantly overstated because it simply combines both Municipal and Superior Court felony costs to get an average cost when in fact many felonies are settled in Municipal Court.

Data calculated by the Superior Court shows that the average cost during 1991-92 for misdemeanors and regular felonies is actually \$667 per case or \$83 per

¹ Based on MCLD and BVHP calculations using 1990-91 Superior Court data.

case less than the \$750 per case non-profit proposal². The analysis by the Budget Analyst shows that the Superior Court estimate is accurate. Because the \$750 cost per case includes "administrative, investigation, clerical, and translation services", the actual cost difference would be smaller but there is no clear cost savings to the City based on the proposed \$750 per case.

The proposal submitted by the two non-profit agencies was unclear as to whether or not serious felonies were to be included in the cases allocated to the two agencies. The inclusion of serious felonies would result in the non-profit proposal showing a slight savings to the City. The Superior Court's analysis showed that the total savings for the 1,000 cases would be \$6,600 or slightly less than one percent if the non-profit agencies included serious felonies. However, such savings would increase if administrative, investigation, clerical and translation services costs are included. However, even including such costs, the savings would still not likely be significant.

The quality and cost of indigent defense representation are the two key factors to consider in proposals that aim to provide an alternative to the BASF lawyers. The proposal as initially submitted by MCLD and BVHP did not appear to offer substantial savings to San Francisco. This does not mean that this proposal could not have been amended to reduce the average cost per case. However, when considering future proposals, the Courts and the Board of Supervisors should look for a more significant cost savings.

Composition of Referred Cases

The proposal submitted by MCLD and BVHP was not clear on whether serious felonies would be included in the 1,000 assigned cases. The inclusion or exclusion of such cases affected the estimated level of savings or costs. Any future proposals should specify what cases, and how many cases of each type would be included in the proposal. This would simplify the task of calculating any savings or costs from contracting either all or a portion of the conflict case workload. From the point of view of administering a contract program, it would be advantageous to have a contractor who took referrals of all types of adult criminal cases.

The submitted proposal also stated that cases would be divided equally between misdemeanors and felonies. This reduced possible cost savings because BASF representation costs for misdemeanors are less than for felonies. If the proposal had stated that misdemeanors and felonies would be allocated based on current percentages - approximately 28 percent misdemeanors and 72 percent felonies - then the cost savings would be significantly increased. If serious felony cases were excluded, the cost per case for BASF representation would be \$761 or \$11 more than the non-profit agency proposal. For the 1,000 cases this would represent a total savings of \$11,000. If serious felony cases are included, then the cost per case for BASF representation would be \$865 or \$115 higher than the non-

² Based on the data contained in Table 2. The figure is the average of the \$454 cost for misdemeanors and the \$881 cost of regular felonies.

profit agency proposal. For the 1,000 cases this would represent a total savings of \$115,000.

Section 6: Recommendations for Controlling Conflict Case Costs

The implementation of proposed recommendations for controlling conflict case costs are solely at the discretion of the Courts. The recommendations presented below are for the consideration of the Courts but the decision as to whether the adoption of such recommendations would result in decreased costs and quality representation resides with the Judges. The Board of Supervisors is required by the State to provide the funds necessary for providing defense representation to indigent clients.

The Courts are most certainly aware of the need to control County costs to whatever degree possible and still provide a high quality of service. To that end, the Courts, (at this point primarily the Superior Court, although the Municipal Court intends to automate by early 1993) have implemented procedures and cost-control measures that resulted in a reduction from 1990-91 to 1991-92 in total costs and average cost per case.

The following recommendations made by the Budget Analyst are additional procedures the Courts should consider undertaking.

1. Conduct a Survey of Attorney Fees in Comparable Jurisdictions

As noted in Section 3, the Bar Association of San Francisco attorneys received a rate increase in September of 1990, which was the first rate increase granted since 1981. This rate increase was the primary reason that total costs for 1990-91 increased by approximately 67 percent and the average cost per case increased by approximately 83 percent over 1989-90 levels. A survey conducted by the BASF showed that the approved rates placed San Francisco above average but below the top rates for all case categories surveyed in other jurisdictions.

The September 1990 rate increase was the primary reason the average cost per case almost doubled between 1987-88 and 1990-91. Given that the BASF attorneys had not received an increase in compensation for over seven years (between 1983 and 1990), the increase seemed justified. However, the Courts should consider fees paid in other jurisdictions (as well as any other relevant factors such as the rate of inflation) before considering another rate increase. We recommend that the Courts conduct an independent formal survey of compensation rates in other comparable jurisdictions at the time that a rate increase is requested by BASF. This data would then provide the Courts with the means to evaluate the reasonableness of the BASF rate request (or the request of any future provider of conflict case services.)

Staff of both the Municipal and Superior Courts report that the compensation for conflict case attorneys will not be raised in the near future. In fact, as noted above, the Superior Court has recently reduced the compensation for

conflict case attorneys by \$5 per hour for criminal cases and \$10 per hour for juvenile cases.

2. The Courts Should Consider Other Contract Options to Reduce the Cost of the Conflict Case Program

The current contract with the BASF provides for the Courts to provide compensation to attorneys on an open-ended basis. Funds are provided to the Courts for all clients which need to be represented for whatever documented charges are submitted by BASF attorneys and approved by the Courts.

The Courts should consider other contract options that could result in reduced costs for the conflict case program. These options could include moving to a fixed price contract for conflict case services with BASF, soliciting proposals from other non-profit agencies or competitively bidding the contract for conflict case services. These contract options could be developed for the entire conflict case workload or for a portion of the services. The decision on whether to adopt an alternative to the current provision of services resides with the Judges and would be based on their evaluation as to whether quality representation could be provided at a reduced cost.

Fixed Price Contract

One option for the Courts would be moving to a fixed price contract that specifies the amount of fixed reimbursement that will be provided for a specific number and mix of cases. A contract could be developed for either the entire conflict case workload or for a specific portion of the workload (i.e. all juvenile dependency cases). The advantages of such a contract would be: 1) a fixed price contract provides an effective method for budgeting contract costs at the start of each fiscal year; 2) would require less paperwork for the Courts because contractors are not required to submit claim forms for reimbursement; and 3) fixed price contracts provide an incentive for attorneys to work efficiently since their payment is based on a fixed cost for providing indigent defense rather than an hourly rate per case.

The primary concern that has been raised regarding fixed price contracts for indigent defense counsel is whether such contracts can result in clients receiving adequate representation. The Guidelines on Indigent Defense Services Delivery Systems approved by the State Bar of California does not explicitly oppose fixed price contracts but does support compensation for services on an hourly basis and generally opposes setting fee limits on compensation for attorneys.

Despite this concern, the use of fixed price contracts by jurisdictions is becoming more common. Los Angeles County contracts with the Alternate Defense Counsel to provide services at a fixed annual cost and the Los Angeles County Auditor-Controller has stated that "fixed cost contracts are a principal method to minimize court appointed attorney costs and it is in the County's best interest to continue to increase the number of such contracts."

Non-Profit Service Providers

As noted above, the Budget Analyst concludes that there is no reason why a non-profit agency proposal for conflict case services should not be considered, if that proposal would result in reduced costs and quality representation of indigent clients. The proposal presented by MCLD and BVHP was a fixed price contract; services would be provided for 1,000 clients at a fixed price of \$750,000. The key with a proposal from a non-profit service provider(s) would be the quality of the offered representation and a proposed cost per case that is significantly less than BASF costs per case and would result in savings for the Courts.

Competitively Bidding Conflict Case Services

The Courts arrangement with BASF offers the advantages of administrative services being provided within the framework of an established legal organization. BASF also ensures the quality of attorneys and establishes qualification and training criteria.

However, the Courts could consider competitively bidding either the entire conflict case workload or a portion of the workload. Obviously, the Judges would need to ensure that conflict case clients would receive quality representation.

3. The Courts Should Consider Adopting Additional Administrative Reforms to Increase Administrative Review of Claims.

The Superior Court recently implemented an automated system that tracks attorney fees. Superior Court administrative staff have been granted authority to resolve questions involving double billing by attorneys for the same hour of court time, billing of more than eight out-of-court hours per day, and for billing more than six hours in court per day. This allows Superior Court employees to resolve obvious questions on the amount of time being expended by attorneys on each case. The Municipal Court anticipates developing a similar system by early 1993.

We recommend that the Courts consider additional administrative reforms. Such reforms should include:

- a. Formalizing written procedures for clerical and administrative review by Court staff prior to submission of claims to the Judges for approval. Such written procedures could include limiting the number of hours per day and per year that can be claimed by attorneys and monitoring claims that exceed these limits. Guidelines would be established that address the circumstances under which exceptions would be granted, who would authorize such exceptions, the documentation that would be required, etc. As an example, death penalty cases might justify an exception on the number of hours per year that could be claimed.
- b. Establish guidelines for assessing the validity of out-of-court time and monitor claims for compliance with established guidelines. These guidelines would include the statistical data that are recommended below

which Court staff should develop for the Judges. This statistical data would provide broad parameters on out-of-court time averages for certain case types that would assist the Judges in their evaluation.

- c. Establish an annual earnings threshold for attorneys that would result in a formal review of each attorney's submissions for payment once they exceeded the threshold.
- d. Conduct spot audits of attorney billings for court time against court calendars.
- e. Develop for the Judges broad statistical profiles of each case type that include the average costs, average hours in court and other indicative statistics that would assist the Judges in determining whether a given submitted claim is realistic when compared to other similar cases.

When considering these administrative reforms, the Courts may determine that additional staff would be required. Such staff might be justified but would need to be balanced against estimates of savings in attorney fees.

Superior Court staff indicated in interviews that the recently implemented reforms (which are specified above) have not resulted in significant documentation of excessive claims and staff question whether additional reforms would result in significant savings. However, the Budget Analyst concludes that the additional reforms specified above could result in additional savings.

Costs and Benefits of Recommendations

The recommendations detailed above, if implemented, could result in a significant decrease in the cost of representation for conflict cases. The cost of attorney representation has averaged over \$6 million per year for the previous two years. The potential magnitude of savings cannot be estimated.

Costs could be incurred if the Courts determined that additional staff would be required to implement the administrative reforms that have been recommended. However, such staff would need to be weighed against estimates of the cost savings that would result from the implementation of the Budget Analyst's recommendations.

Appendix 1: Methods of Handling Indigent Defense Conflict Cases in California Jurisdictions Surveyed

County of Alameda

Alameda County contracts with the Alameda County Bar Association (Bar) for the provision of conflict attorney services. The Bar established the Court Appointed Attorneys Program (CAAP) to conduct the conflict attorney services operation. CAAP is governed by a committee composed of nine CAAP attorneys.

CAAP accepts capital and non-capital homicide, felony, misdemeanor, juvenile delinquency and dependency cases. CAAP conflicts attorney panel members must renew their CAAP panel membership annually and pay a membership fee. Panel attorney applicants must meet experience requirements for the types of cases to which they will be assigned. The fee schedule for payment of panel attorneys is based on the types of cases.

When a case is completed, the panel attorney submits a bill, in accordance with the established fee schedule, to CAAP. CAAP staff review the bill for accuracy and verify claims for fees for court appearances against Superior and Municipal court schedules. Billings are then sent to the County Auditor for payment. When, due to skill, effort or expertise, an attorney can avoid fees in felony and misdemeanor cases, the CAAP governing committee may award the attorney a portion of the savings. CAAP reduces the fee by 25 percent when a billing is submitted more than 31 days after a case is closed. CAAP further reduces the fee by 25 percent for each additional 30 days. CAAP summarizes earnings by each panel attorney quarterly and puts any attorney earning more than \$5,000 in the quarter at the bottom of the panel list.

In both 1991 and 1992, CAAP handled approximately 6,000 cases with a contract budget of approximately \$2.9 million (or an average of approximately \$483 per case) that included both CAAP administration costs and payments to panel attorneys.

In an effort to reduce the cost of conflict cases, the Public Defender proposed the creation of an Alternate Defense Unit within the Public Defender's Office two years ago that would defend conflict cases for some areas of the county instead of using CAAP. However, Alameda County Board of Supervisors rejected the Alternate Defense Unit proposal.

County of Contra Costa

Contra Costa County has a contract with the Criminal Conflicts Program operated by the Contra Costa County Bar Association for the provision of conflict attorney services. A seven member committee oversees the Criminal Conflicts Program.

The Criminal Conflicts Program assigns panel attorneys for all misdemeanor and felony conflict cases. The assigned panel attorney represents

Appendix 1: Methods of Handling Indigent Defense Conflict
Cases in California Jurisdictions Surveyed

felony cases in both the Municipal and Superior Courts. Panel attorneys renew their membership annually and pay an annual membership fee.

Panel attorneys submit bills for their services to the Criminal Conflicts Program. Bills for less than \$1,000 are reviewed by the Program Administrator. Bills for \$1,000 or more are reviewed by both the Program Administrator and by a subcommittee of the seven member oversight committee. The Bar Association issues checks to the panel attorneys for their services and submits a summary bill to the County for reimbursement. The Director of Justice Systems Program in the Chief Administrator's Office of the County audits the summary bill and authorizes payment by the County Auditor Controller.

The Contra Costa Criminal Conflicts Program reports costs per case for fiscal years 1990-91 and 1991-92 as follows:

	<u>1990-91</u>	<u>1991-92</u>
Capital cases	\$ 20,641	\$18,433
Non-capital homicides, life sentences, sentence more than 15 years	6,510	7,022
Sentence less than 15 years but more than 6 years	2,459	2,485
All other felonies	1,237	1,276
Misdemeanors	305	258
Juvenile delinquency/homicides	7,423	4,705
Juvenile delinquency	554	600
Juvenile dependency	930	1,106

The Contra Costa County Public Defender's Office is in the process of establishing an Alternate Defense Unit. The Alternate Defense Unit currently has a staff of eight attorneys that are costing approximately \$40,000 per month for salaries, fringe benefits and space lease. The Public Defender plans to increase the staff of the unit to a total of 16 attorneys. According to the Public Defender, the initial costs of the program have been approximately 30 percent less than 1991-92 per case costs for the Criminal Conflicts Program.

County of Los Angeles

The Los Angeles County criminal court system is by far the largest of the jurisdictions surveyed. Superior Court alone is divided into ten separate court districts and 102 courtrooms for criminal matters. Civil courts are often assigned criminal cases because of backlogs and jail overcrowding.

Indigent defense conflict cases in the County of Los Angeles are handled by a combination of private attorneys appointed through Bar Association sponsored panels (the Indigent Criminal Defense Appointments Panel in the Central Court District and various other rotational bar panels in most other court districts), a non-profit Alternate Defense Council that contracts with the county to serve four

Appendix 1: Methods of Handling Indigent Defense Conflict
Cases in California Jurisdictions Surveyed

districts and 56 courts, and, in one court district, (East) a fixed fee contract with the Pomona Contract Lawyers Association.

The Indigent Criminal Defense Appointments Panel (ICDA) attorneys are independent contractors that are classified into four grades according to experience. They are paid on an hourly basis from \$45 to \$100 per hour for various tasks. Actual total compensation is decided solely by the trial judge.

In 1983 the Los Angeles County Board of Supervisors created a non-profit organization, the Alternate Defense Counsel Office (ADC). The ADC now handles all conflict cases as well as overflow and unavailability cases from the Public Defender's Office in four court districts (Central, North Valley, North-West and West). ADC has a staff of 72 attorneys and handles all classifications of criminal cases. In the Central District, conflict cases are assigned on an alternating basis to both the ADC and the ICDA. Occasionally, the ADC itself may be unable to take a conflict case due to its own internal conflict. In such instances, the case is assigned to a private ICDA attorney.

The Pomona Contract Lawyers Association has a fixed fee contract to provide indigent defense services in cases of Public Defender conflict or unavailability for the East Superior Court District. This relationship is less than a year old and no data is available at this time.

As with all other jurisdictions contacted, Los Angeles County cost data by type of conflict case handled has not been compiled in a meaningful manner to permit valid comparisons with other counties. In Los Angeles, the data we were provided was compiled by a 1991 management audit report to the Civil Grand Jury. These data do not permit valid comparisons for conflict case costs within the county as well.

The table on the following page provides the available case count and expenditure data for all indigent defense cases during fiscal year 1989-90.

Los Angeles County: 1989-90
Indigent Defense Counsel Case Counts and Costs

	<u>No. of Cases</u>	<u>Total Expenditures</u>	<u>Average Cost per Case</u>
Public Defender Office			
• newly charged felony cases	42,741	\$32,000,000	\$749
• probation violations	28,329		
• miscellaneous proceedings	10,411		
Court Appointed Attorneys			
• all cases	7,217	\$22,000,000	\$3,048
• Grade IV; Complex Crimes	342	\$12,260,000	\$35,848
• All other cases	6,875	\$9,740,000	\$1,417
Alternative Defense Counsel (ADC)			
• all cases	2,662	\$2,200,000	\$826

Appendix 1: Methods of Handling Indigent Defense Conflict Cases in California Jurisdictions Surveyed

County of Marin

The Superior Court generates and maintains a panel list of attorneys that are assigned felony and juvenile conflict cases. Both the Municipal Court and Superior Court assign conflict cases to attorneys on this list. The Municipal Court contracts with the Marin County Bar Association, Criminal Bar Section to provide conflict attorneys for misdemeanor cases.

Billings from the Superior Court conflict panel attorneys are sent to the Superior Court where they are checked for accuracy and are checked against computer records of the court calendars and case histories. The billings are then sent to the Superior Court Judges for final payment authorization. Any problem billings are referred to the Fee Committee that is composed of three Superior Court Judges.

The Marin Superior Court budgeted \$450,000 for conflicts attorneys in fiscal year 1991-92 for approximately 125 cases and budgeted \$425,600 for 1992-93 for a similar caseload. The actual costs for 1991-92 were \$653,000 and exceeded budgeted funds by \$203,000.

County of San Diego

Prior to August, 1990 a county-employed central administrator assigned all conflict cases to a Bar Association panel of conflict attorneys. In June, 1989 San Diego County created an Alternate Defense Counsel office staffed by county-employed attorneys. San Diego's Alternate Defense Counsel office began operations in August, 1990.

The San Diego Alternate Defense Counsel (ADC) was expected to achieve significant savings from the start. Original forecasts indicated that costs avoided would amount to \$445,650 in 1990-91 and \$4.75 million in 1991-92. When contacted by this office, the San Diego ADC stated that so far, actual savings have not reached anticipated levels. The latest review of case costs shows that the average cost per case for all felony cases handled by the ADC amounts to \$671 per case while felony cases handled by the Bar Association panel average \$1,937 per case.

County of San Mateo

San Mateo County does not have a Public Defender's Office. Instead, San Mateo County contracts with the San Mateo County Bar Association for all public defender services including cases that would normally be considered conflict cases. San Mateo County spent approximately \$7.9 million for approximately 24,000 cases in 1991-92 for an average of \$329 per case. San Mateo expects to spend approximately \$7.4 million in 1992-93 even though their 1992-93 budget is only \$7.1 million.

Appendix 1: Methods of Handling Indigent Defense Conflict
Cases in California Jurisdictions Surveyed

County of Santa Clara

In 1980, Santa Clara County began referring conflict cases to the Conflicts Administration Program, Inc. (CAP) under a joint resolution signed by the Bar Association, the County courts and the County Administration. In 1989, CAP became a non-profit corporation and began a three-year contract with Santa Clara County in 1990. The CAP Board of Directors consists of three lawyers appointed from the Bar, three judges appointed from the Municipal Court and three judges appointed from the Superior Court. The Board of Directors selects an Executive Director to oversee daily operations of CAP.

CAP accepts misdemeanor, felony (including capital and life sentence), juvenile delinquency and dependency cases. Homicide and extraordinarily complex cases are appointed to CAP panel attorneys by the Executive Director. Appointment Secretaries make attorney assignments for all other cases. Assignments to panel attorneys are made on the basis of the level of experience of the panel attorneys. The fees paid are also set based on the level of experience.

Panel attorneys submit their bills for services to CAP. The bills are audited by the CAP accountant and adjusted as necessary before being forwarded to the County Controller for payment. Bills for compensation for services not covered by the fee schedule are referred to the CAP Fee Review Committee. CAP submits quarterly caseload and budget reports to the County.

In 1990-91, CAP handled 4,844 conflict cases with a contract budget of \$3,320,460, or an average cost of \$685 per case. Approximately seven percent or approximately \$232,432 was for CAP administration costs with the balance of approximately \$3,088,028 being paid to panel attorneys.

For 1991-92, CAP expended \$3,543,323 to represent 5,029 conflict cases with \$276,255 or approximately eight percent for CAP administration. For 1991-92 the average cost per case was \$705. According to CAP, the fact that more death penalty and homicide cases were handled in 1991-92 than in 1990-91 accounts for the higher average cost per case (\$705 as opposed to \$685).

Appendix 2: References

This report relied on a number of studies and reports that provide background on the issues involved in representing indigent clients and conflict case programs.

Annual Report 1990-91 Fiscal Year, Office of the Public Defender, City and County of San Francisco

Appointment of Counsel for Indigent Persons in Criminal and Juvenile Matters, Bar Association of San Francisco, December 20, 1991

Board Ordered Review of Court-Appointed Attorneys, Los Angeles County Auditor-Controller, December 1990

The Community Defender Plan, A Proposal by Mission Community Legal Defense, Inc., and Bayview-Hunter's Point Community Defender Program, October 28, 1991

Defending the Indigent Client: Options for the City and County of San Francisco; Leung, Mingyew; Mead, Victoria; Schneider, Janet; and Stone, Daniel; May 1989

Guidelines on Indigent Defense Services Delivery Services; Commission on the Delivery of Legal Services to the Indigent Accused, December 1990

Review of Indigent Legal Representation in Criminal Cases, Price Waterhouse report prepared for the 1990-91 Los Angeles County Grand Jury



Superior Court of California

San Francisco

DEPARTMENT OF PRESIDING JUDGE
CITY HALL

October 27, 1992

Mr. Harvey Rose
Budget Analyst
San Francisco Board of Supervisors
1390 Market Street, Suite 1025
San Francisco, CA 94102

Dear Mr. Rose:

The San Francisco Superior Court has reviewed your report to the Board of Supervisors concerning the representation of indigent persons in conflict of interest cases. The Court offers the comments detailed below.

Survey of Other Jurisdictions

The Court has no objection to conducting any future surveys of rates paid by surrounding jurisdictions, rather than relying on the Bar to do so. However, there are no plans by the Court to consider fee increases in the near future. In fact, the Superior Court has reduced rates paid for criminal cases by \$5 per hour and those paid for juvenile cases by \$10 per hour, effective November 1, 1992.

Contract Alternatives

The Court is willing to consider some of the contract options offered by the Budget Analyst, to the extent that they do not affect the quality of representation provided to defendants.

We are considering the efficacy of fixed-price contracts for dependency cases, where the large number of cases represented by individual attorneys protects them from extensive financial loss if representation in one case becomes particularly costly. Some counties, including Marin County, have established fixed per case costs for capital cases. The experience in Marin County has been mixed. While administration of the payments has become simpler for

Mr. Harvey Rose
Budget Analyst
October 27, 1992
Page two

the Courts, some attorneys have experienced great financial loss in capital cases and have indicated that they will not accept these cases in the future. We are concerned that well qualified attorneys will reject cases under a fixed price contract system or that others will provide less than full representation in order to meet their costs, thereby affecting the quality of representation. As the Budget Analyst mentions in his report, the State Bar of California is opposed to compensation for services on an hourly basis.

The Superior Court will also consider any proposals for a fixed price contract for the entire conflict case load received from non-profit legal clinics or groups of individual attorneys. We have some concern with this proposed approach because if contract providers prove unable to provide adequate representation to all defendants requiring it, the Courts cannot avoid their responsibility to accept and provide this representation.

In addition, the Courts have been able to manage the budget appropriated for conflict counsel without a supplemental for the past two years, and intend to continue to do so. Cost overruns by a contractor would undoubtedly result in a request for supplemental funds from the County. Having all cases handled by another entity removes the administrative controls which the Courts have established over the cost of these cases, leaving the County open to potential abuse by a contract provider. Thus, continuing to utilize the conflict panel offers the County a level of consistency in case handling and cost control that may not be available through a contractor. It should also be pointed out that inadequate representation can result in appeals, leading to greater costs to the County.

Administrative Reforms

Administrative reforms already introduced by the Superior Court have resulted in the return of \$75,000 to the County by panel attorneys and may have had an impact on the \$500,000 reduction in conflict costs experienced in fiscal year 1991-92. These reforms, the most important of which is entering all times and dates worked by panel attorneys into our computer system to prevent double billings, have required that we devote one full time staff person to review and payment of these petitions for compensation.

The Court is fully supportive of the further recommendations of the Budget Analyst to provide the Judges with statistical information concerning the average cost per case and

Mr. Harvey Rose
Budget Analyst
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number of hours for categories of cases (e.g. regular felony, dependancy). We further support performing a thorough review of payments to individual attorneys once they exceed a given amount for the fiscal year.

There are two recommendations in this area with which we disagree. The Court does not support establishing guidelines for assessing the validity of time claimed for out-of-court work since the types and extensiveness of activities vary so greatly by case. The review of out-of-court activities is performed by each individual Judge based on his/her knowledge of the unique circumstances of the case.

The final recommendation, that the Court conduct spot audits of attorney billings for court time against court calendars, would require that we enter individual court calendars into our tracking system. Court staff do verify that time claimed for in-court work does not fall on a weekend or holiday. We believe that further review would be unduly time consuming and result in little, if any, savings to the County.

The Superior Court would like to thank the Budget Analyst's Office for the thoroughness of its review. We have found working with the Budget Analyst's Office to be a rewarding and productive process.

Very truly yours,



EDWARD STERN

Presiding Judge

cc: Supervisor Jim Gonzalez, Chair, Finance Committee
Hon. Joseph Desmond, Presiding Judge, Municipal Court
Gordon Park-Li, Clerk-Administrator, Municipal Court

OFFICE OF THE PUBLIC DEFENDER

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PETER G. KEANE
Chief Attorney

September 30, 1992

Kurt Abrahamson
Budget Analyst's Office
1390 Market St., #1025
San Francisco, Ca. 94102

Dear Kurt,

I have read the Budget Analyst's report about conflicts, and I think on the whole it is an accurate and wisely-considered document. I believe most of the recommendations can be adopted within a short period of time. Some comments:

First, oversight will drive down the costs of conflict cases. I believe that the reduction experienced in 1991-92 in the Superior Court is indicative of that. The major reason for the drop of some \$500,000 was the establishment of sound procedures. Kate Harrison and Judge Stern deserve a great deal of credit. By contrast, the Muni Court did not do this, and they experienced an increase of 8.3%.

Second, I disagree with your recommendation that competitive bidding be considered. Competitive bidding jurisdiction has usually led to a lamentable state of affairs. What usually happens is that bids are made well below realistic levels for competent representation. After receiving contracts, contractors tend to dispose of cases as cheaply as possible without regard to the requirements of full and thorough representation. They cut corners and evade assignments that might prejudice their profit margins. They spend inordinate time on disputes about their contractual responsibilities. Rarely do competitive contractors see their primary purpose as the protection of the rights of accused. San Diego County experienced exactly this history with their system of competitive bidding for indigent contracts.

Kurt Abrahamson
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September 30, 1992

Third, I would encourage the establishment of a non-profit agency to handle dependency cases as a specialized function so as to build-in a determinacy to those costs.

Finally, there should be a mechanism for quality control review of all indigent defense, including by the Public Defender. Whatever format is adopted, the courts and the clientele should be assured that indigent defendants are receiving constitutionally-required, competent representation.

Yours very truly,


Jeff Brown
Public Defender

JB:cps

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October 7, 1992

Harvey Rose
Budget Analyst
San Francisco Board of Supervisors
1390 Market Street, Suite 1025
San Francisco, CA 94102

Dear Mr. Rose:

On behalf of the Bar Association of San Francisco's Ad Hoc Committee on Conflicts Programs, I am writing regarding your report to the Board of Supervisors on the representation of indigent persons in conflict of interest cases. It is my understanding that the final report may be issued shortly. I would like to bring to your attention the efforts made in the past year by the Bar Association and members of the panel to assess and improve current operations and to reduce the costs of the program.

Throughout the past year, representatives of the conflicts panels have worked diligently to examine operations of the Conflicts Program to determine what additional measures could be taken to increase efficiency and produce cost savings. The resulting billing guidelines (a copy of which is enclosed), which the Superior Court adopted this past spring, will assist panel members in billing appropriately by eliminating any uncertainty which may exist with respect to payment in court-appointed cases. We are informed these guidelines already have contributed to savings, and we are confident they will further reduce costs in the future. In addition, we have worked closely with the court to develop new billing forms which improve the court's ability to collect data on conflicts assignments. This will detect possible billing errors which will then be examined by the court. We have distributed the revised forms and responded to questions from panel members regarding their use.

Late last year, BASF issued a paper entitled Appointment of Counsel for Indigent Persons in Criminal and Juvenile Matters, which addresses the primary issues to be considered in any analysis of systems of representation in conflicts cases. A copy of this paper, which is still highly relevant, is enclosed. We believe it would be useful to have it included in the bibliography for your report, and made available for review by the Board of Supervisors.

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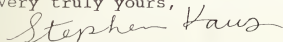
In 1990, BASF made a detailed analysis of the costs of conflicts programs in other jurisdictions of the Bay Area. This analysis has been updated periodically, and made available to the court. It is our understanding that this cost comparison was carefully considered before the decision was made to increase the rates of compensation for conflicts attorneys. Our analysis showed that the costs of this program are comparable to other counties despite significantly higher operating and overhead costs experienced by attorneys practicing in San Francisco. Any comparison of costs of compensation must be mindful of the fact that most of the preliminary work in criminal cases is done at the extremely low municipal court rate, resulting in an overall cost which is considerably less than the superior court rate.

In addition to these efforts, BASF's administration of the conflicts panels continues to assure that highly qualified attorneys are readily available to the court for appointment to represent indigent defendants. All administrative costs of the program are paid directly by the members of the panel, including the costs of day-to-day operations of the program, which ensure that as many as six appropriately qualified attorneys are available each day for appointment by the court. These costs include mechanisms for assuring quality control through careful screening of new applicants, as well as a system for providing training to less experienced attorneys. These efforts result in broad participation by a diverse population of highly qualified attorneys. A further benefit of the program is the requirement that all panel members carry errors and omissions insurance.

Finally, as you know, of prime importance in the consideration of any contract defense proposal is the quality of representation provided to indigent defendants. I have enclosed a copy of an article which appeared recently in the Recorder. This article highlights only too well the potential dangers of emphasizing cost savings over quality representation.

We appreciated the opportunity afforded us last year as your office undertook its examination of this matter. I hope the information provided in this letter will be of use in formulating your final report. Of course, I and other representatives of the Bar Association of San Francisco are available to respond to any questions which this letter and the enclosed materials may raise.

Very truly yours,



Stephen Kaus, chair
Ad Hoc Committee on Conflicts Programs

enclosures

